



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20350-1000

DEC 28 2005

MEMORANDUM FOR MEMBERS OF THE SECRETARY OF THE NAVY'S  
RETIREE COUNCIL

Subj: 2005 RETIREE COUNCIL REPORT

Encl: (1) 2005 Retiree Council report with responses

Enclosure (1) is forwarded to you for your information. It contains the 2005 Retiree Council report items developed at the Council's annual meeting along with the official Department of Navy responses to each of those items. You may note that some report items have been referred to other agencies in order to gather further information or for action. These items are considered to be in an open status, and as new information is received, updates will be provided as necessary.

Enclosure (1) will also be provided to the Navy and Marine Corps for publication in the official retiree newsletters, Shift Colors and Semper Fidelis, and will be posted on the Retiree Council's website sponsored through LIFELines.

A handwritten signature in black ink, reading "William A. Navas, Jr.", is positioned above the typed name.

William A. Navas, Jr.  
Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)

**Item No: A-1.05**

**Subject: THE PROMISE OF SEAMLESS, COMPREHENSIVE HEALTHCARE**

**RECOMMENDATION:**

**That the Secretary of the Navy strongly urge TRICARE Management Activity to coordinate with appropriate agencies to provide a seamless, comprehensive healthcare benefit for all beneficiaries. Specifically,**

- a.) Ensure that key and essential information about available TRICARE benefit options and information such as appointment processing, formulary and prescription policies, service availability, current phone numbers, and points of contact are disseminated in a timely manner.**
- b.) Have TRICARE publish status reports of their survey results in compliance with Public Law article 723-724, the requirement to inform both user and provider of program availability and usage. Enforce the contract reporting requirements as written.**
- c.) Encourage TRICARE contractors to aggressively increase the network capacity in underserved locations.**
- d.) Assure that TRICARE utilize all available mechanisms of marketing and education to make the TRICARE community knowledgeable and confident with the available options in order to make wise healthcare delivery choices.**
- e.) Initiate necessary legislative changes to include comprehensive eye examinations at all levels of the TRICARE benefit.**
- f.) Include FDA-approved technologies and technical advancements at all levels of the TRICARE benefit.**
- g.) Simplify and streamline the specialty referral authorization process.**

**DISCUSSION:**

Although, last year's recommendation by the same name was designated 'closed,' the Council understands that healthcare is the number one benefit that concerns retirees. We recognize and appreciate the considerable efforts and improvements in the military health system (MHS) and we are grateful for the significant effort extended on behalf of all retirees. We are impressed and encouraged by demonstrated progress that has been made in the improvement and refinement of the TRICARE health benefit for retirees. However, the Council is also concerned that economic forces, optempo, pending BRAC, increasing age diversity and volume of the retired population will continually threaten the promise of comprehensive healthcare for retirees.

**ENCLOSURE (1)**

Two major components of a seamless, comprehensive healthcare benefit are effective communication and easily identifiable access to quality care.

### **Communication Issues:**

Healthcare transition points – Upon retirement and prior to TRICARE-for-Life (TFL) eligibility, major concerns exist. The retirees under 65 understand the system optempo and deployment requirements, but it raises their anxiety and frustration that access to their benefit may change with significant reliance on and utilization of the network providers and services. Establishing their confidence that the promise will be kept as their healthcare is transitioned from one delivery option to another should be the fundamental focus of attention.

Timely beneficiary and provider education – Changes in program execution are not consistently communicated to either beneficiaries or the providers with reasonable, adequate lead-time. Providers, both network and non-network, may have limited knowledge of program specifics. Too often retirees are made aware of new program modifications and local applications (appointment processing, prescription policies, dates of service availability, current phone numbers and points of contact) at the point of service when it is too late to make reasonable accommodations. There are many communication vehicles available including town hall meetings, retiree seminars, consumer councils, Fleet Family Support Centers, Pentagon channels, retiree newsletters, *Shift Colors/Semper Fidelis*, TRICARE website, messages on interactive voice response, direct mail, Veterans' Service Organization websites and other support organizations (DeCA, DFAS, DEERS) and education material at healthcare treatment facilities.

Formulary usage and pending changes – Proposed changes to DoD formulary policies are in process with potential for enormous impact on all participants. However, most customers are vaguely aware of proposed formulary and program changes on the horizon. There should be a comprehensive communication plan in place to inform retirees regarding changes prior to the effective date.

Contract compliance - Significant time and resources have been spent on the current successful contracts, however, there has been an inconsistent flow of information available to adequately evaluate the effectiveness of TRICARE contractor performance. The Council encourages responsible authorities to obtain timely reports and monitoring of contract compliance, both within and across TRICARE regions.

Customer service – The Delphi Council Survey completed in 2005 documents that a high percentage of callers surveyed were dissatisfied with phone courtesy. Entry point customer relations are pivotal to successful beneficiary experiences with the TRICARE system. Investment in customer service relations will enhance understanding, cooperation and facilitate improved utilization.

### **Access Issues:**

A comprehensive benefit must include regular eye examinations. The retiree community has increasing need for optometry support as they age and lack of regular examinations could have detrimental effects on their long term health status. Current statutes preclude this examination for those utilizing TRICARE Extra, TRICARE Standard and TRICARE-for-Life. The Council strongly supports necessary legislative changes ensuring comprehensive eye examination as an integral part of good health care.

Proven technologies and advancements in healthcare delivery systems have markedly enhanced diagnostic capabilities and refined clinical screening. These clinical options which make early screening, diagnosis, and intervention possible are deemed safe and effective and approved by the FDA. These services are widely available but not currently covered by the TRICARE benefit. Including options such as digital scanning, C-reactive protein screening and virtual colonoscopy in covered services will direct austere funds to preventive and screening services, rather than more expensive treatment options with lower success rates. This will result in healthier population outcomes and decreased healthcare costs for the government.

The participating provider network is more robust in some areas than others, resulting in some underserved areas. This, compounded by low reimbursement rates, slow reimbursement response, a limited number of providers at maximum capacity, increased reliance on network providers, and increased optempo creates a lack of access for many potential beneficiaries in some geographic areas.

A cumbersome referral authorization process sometimes results in inappropriate billing of the retiree for approved specialty care. It is then incumbent upon the retiree to remedy the billing chaos. Many retirees have not developed the necessary skills to sort through the overwhelming process.

**RESPONSE: DEFER TO TRICARE MANAGEMENT ACTIVITY.** The Retiree Council's comments above have been forwarded to the Director of the TRICARE Management Activity as areas under his cognizance for response.

**STATUS: OPEN.**

**Item No: A-2.05**

**Subject: DEPARTMENT OF THE NAVY RETIRED ACTIVITIES PROGRAM**

**RECOMMENDATION:**

**A. That the Secretary of the Navy emphasize the value and importance of the Department of the Navy Retired Activities Program, specifically the Retired Activities Offices (RAO), as a valuable conduit to the retiree community.**

**B. The Secretary of the Navy direct the CNO and CMC communicate to Commanders the importance of the Navy Retired Activities Program as defined in SECNAV INSTRUCTION 5420.169H .**

**DISCUSSION:**

Currently Secretary of the Navy Instruction 5420.169H, Department of the Navy Retired Activities Program, defines the parameters of the Retired Activities Offices' organization, structure, mission, and support requirements. As defined, Retired Activities Offices are staffed by volunteers with the primary responsibility of providing assistance and support to the retirees, their spouses, family members, and widows. The value of the Retired Activities Offices depends on their ability to provide a service to the retiree in time of need, provide timely information regarding benefits and provide administrative requirements to the retiree community as a whole in specific geographic areas. Command support to the Retired Activities Offices is an essential component to the Program.

The SECNAV Retiree Council members conducted an informal survey of various Retired Activities Offices with the aim of identifying their effectiveness and utilization. During this survey, we asked what their needs were and reviewed the issues they are addressing with the retirees who avail themselves of their services. The survey indicated significant differences among the various Retired Activities Offices. Some offices were well staffed with volunteers, receiving good support from the local Commanders, and consequently providing excellent service to the retiree community. Others appeared to have limited to no volunteers available and minimal support from local commanders. Further review indicated a reduction in the number of Retired Personnel Seminars being conducted. In some cases the RAO existed in name only with no services provided.

**RESPONSE: CONCUR.** Correspondence has been sent to the Navy and Marine Corps to request their assistance in reemphasizing the RAO program. SECNAV Instruction 5420.169H has been updated; SECNAVINST 5420.169J was signed on 17 October 2005. This new instruction was included in the correspondence to encourage the use of the updated guidance to reemphasize the importance of the RAO program in each Service.

**STATUS: CLOSED.**

**Item No: A-3.05**

**Subject: DEVELOPING A NAVAL DEPARTMENT AUXILIARY FORCE**

**RECOMMENDATION:**

**That the Secretary of the Navy continue to strongly support development of a Department of the Navy Auxiliary Force -- a program which the Total Force Transformation Working Group is planning to examine.**

**DISCUSSION:**

In our 2004 Report, the Council recommended commissioning a study to evaluate the viability of developing a Department of the Navy Auxiliary Force from the Navy and Marine Corps retiree community. In response, the Secretary referred the recommendation to the Total Force Transformation Working Group stating, that the proposal was “clearly feasible” and held “great promise for the Department of the Navy organization as it seeks to restructure itself into a more agile, flexible workforce...”

The Retiree Counsel thanks the Secretary for his positive response to this initiative and strongly urges continued support of the Secretariat for an expanded role for the retired community as volunteers supporting the active force. The retired community represents a largely untapped resource of experience, skills, and talent which stands ready to answer the call to support active duty commanders. It is the Council’s strong position that the retired community should be an essential element of any future Navy Auxiliary Force.

The Council requests that this item remain in an “OPEN” status pending results of the Total Force Transformation Working Group’s final report on this item.

**RESPONSE: CONCUR.** Through the leadership of the Force Management Oversight Council (FMOC) and the ASN(M&RA), the Department of the Navy is about to launch a concentrated effort to transform and better integrate the Total Force. Entitled “Human Capital Transformation,” this process seeks as an end product “a total force of dedicated, courageous, innovative professionals—Sailors and Marines (active duty and Reserve), government civilians, government contractors, and *volunteers*—who can master the challenges of this new operational and business environment.” One of the strategic goals developed for this transformation process is to “provide more flexibility in how our people transition out and across systems, including multiple options to move between statuses (i.e., active duty military, reserve, *volunteer*, retirement), giving both the DON and the individual service member greater freedom of maneuver.” Among the future efforts in support of this strategic goal will be to flesh out the necessary policy initiatives, tasks, and milestones necessary to achieve this strategic goal. Additionally, it should also be noted that the DoD Quadrennial Defense Review effort has been closely aligned with the DON effort and has included volunteers in its list of Total Force players. Additional information will be provided as future events warrant.

**STATUS: OPEN.**

**Item No. A-4.05**

**Subject: FULL RETIREMENT PAY FOR RETIREES CLASSIFIED AS INDIVIDUAL UNEMPLOYABILITY (IU)**

**RECOMMENDATION:**

**A. That the Secretary of the Navy support a change in DoD policy to permit eligible retirees who have a combined combat-related disability of 60 percent or greater *and* who are considered by the VA to be unemployable, to receive Combat Related Special Compensation (CRSC) at the 100 percent rate if their Department of Veterans Affairs (VA) disability ratings are increased to 100 percent.**

**B. That the Secretary of the Navy support legislation to allow full retirement pay for retired military personnel who have an Individual Unemployability (IU) rating from the VA and receive Concurrent Retirement and Disability Pay (CRDP).**

**DISCUSSION:**

There are two ways for a claimant to achieve a total disability rating with the Department of Veterans Affairs (DVA): the first is to qualify for a 100 percent rating under the schedule set forth in part 4 of 38 C.F.R; the second is to meet the standards of the regulations governing "individual unemployability" (IU). IU exists to cover the situation in which a service-connected disability makes the veteran unemployable under "the established policy of the Department of Veterans' Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled."

The definition of IU is provided above because the term plays a significant role in the amount of compensation paid by DoD for Combat Related Special Compensation (CRSC) and Concurrent Retirement and Disability Pay (CRDP). When Congress approved the most recent changes in concurrent receipt, there were apparently unintended consequences for these two groups (CRSC and CRDP) of disabled retirees. Specifically:

1) DoD established a policy to allow military retirees who had a combined combat-related disability rating of 60 percent or greater *and* who meet the VA's IU requirements to receive CRSC at the 100-percent rate. Although this policy is advantageous for most retirees in that situation, some will lose military retired benefits. For example, if a retiree's VA disability rating is increased to 100 percent and their CRSC rating remains unchanged, total compensation may actually decline. Let's say, a military retiree has an 80 percent CRSC rating and a VA rating of 90 percent and is unemployable (IU), he/she will receive a CRSC payment based on 100 percent. But if the VA changes this same retiree's disability rating to 100 percent, the IU rating (usually) is withdrawn and the retiree's CRSC payment would be reduced to 80 percent, resulting in a loss of military retired pay. (The VA does not necessarily classify veterans who are 100 percent disabled as IU.) This inequity can be corrected by changing DoD policy to allow those military retirees considered IU who are subsequently increased to a 100 percent disability

rating, to continue to receive their CRSC entitlement at the 100 percent dollar amount. The Council strongly supports this change in DoD policy.

2) A similar situation exists for those military retirees entitled to CRDP and who are IU. Section 642 of the FY 2005 National Defense Authorization Act (NDAA) repealed the phase-in period of concurrent receipt for retirees receiving VA disability compensation for a disability rated as 100 percent. But it did not directly address military retirees who are rated less than 100 percent disabled by the VA but who are IU and therefore are compensated by the VA at the 100 percent rate. These military retirees – who are being paid at the VA 100 percent disability rate although they are not 100 percent rated – are not entitled to immediate full concurrent receipt. These retirees (estimated to be about 30,000), who are IU and in many cases whose only source of income is their VA disability compensation and their DoD retired pay, are required to wait the entire 10 year phase-in period to receive full concurrent receipt. It is the opinion of the Council that they should receive the same treatment as the other 100-percent disabled retirees. A legislative amendment to section 642 of the FY 2005 NDAA is needed to clarify the eligible pool of those military retirees entitled to full concurrent receipt. The Council encourages the Secretary to support legislation to include this group of military retirees among those entitled to immediate full concurrent receipt.

**RESPONSE TO ITEM A: DO NOT CONCUR.** Individual Unemployability (IU) is a VA determination designed to assist a veteran who cannot work due to severity of disabilities rated at less than 100% overall. The VA Legal Counsel stated that no additional benefit is accrued to an IU individual who is later evaluated as 100% disabled due to medical conditions, so the IU status is removed by the VA at such time as the veteran is rated 100% disabled. This legal decision was rendered before the CRSC program came into effect.

The Office of the Secretary of Defense issued revised Program Guidance for CRSC (dated April 15, 2004) that established the policy that CRSC is to be paid at the 100% rate for all qualifying cases judged IU by the VA. It is important to note that this is a blanket policy; in other words, CRSC is paid at the 100 percent rate *whether or not* the reason for the IU determination is connected to combat-related injuries.

The recommendation made by the Council above is, in effect, a “grandfather clause” whereby once a retiree has received CRSC at the 100% rate due to IU, they should forever receive CRSC at the 100% rate regardless of the actual percentage of combat-related injury. The problem with this is that it establishes a precedent whereby if any retiree’s CRSC percentage is decreased, then he or she should always be paid at the higher rate. It is additionally problematic because the IU determination may not even be based on a combat-related injury.

It may not be generally known, but VA ratings can fluctuate up and down several times during the lifetime of a veteran (i.e., rapid/slow progression of a disease, surgeries, extended hospitalization, remission, frequency of VA examinations requested by the individual, changes in medical findings, court decisions, etc.). For example, a retiree may be rated at 30% for Post-Traumatic Stress Disorder (PTSD) for many years, be hospitalized for a PTSD episode, and be reevaluated by the VA as 100%. At a later date, once treatment has been received, the rating may be adjusted downward again by the VA. VA disability compensation to the veteran also is



increased and decreased accordingly. There is no precedent for VA benefits to be paid only at the highest level attained. Each case is reevaluated and changes are made to benefit levels as needed. Likewise, CRSC eligibility, which is by law tied to the VA's disability ratings and diagnoses, must also be reevaluated as these ratings and diagnoses codes change, and benefit levels must be adjusted accordingly.

An alternative solution that would remove this perceived inequity would be to change DoD policy to de-link IU from CRSC, and only pay CRSC for those diagnoses determined to be combat-related and for those Special Monthly Compensation (SMC) codes linked to a combat-related diagnosis. However, this solution would have a negative impact on the many retirees currently receiving a 100% CRSC payment due to an IU determination.

Viewed in this light, the policy as it currently stands provides the greatest "benefit of the doubt" for IU retirees by providing them with a 100% CRSC payment (regardless of the nature of the unemployability), but also retains the essential connection between CRSC and the VA process.

**STATUS: CLOSED.**

**RESPONSE TO ITEM B: DEFER TO CONGRESS.** As noted above, this remedy must be made through change to the statute. As of this writing, similar provisions in both the House and Senate versions of the FY 2006 National Defense Authorization Act (NDAA) would provide full immediate concurrent receipt of retired pay and VA disability compensation to qualifying retirees with an IU determination from the VA. It appears virtually certain that this provision will end up in the final version of the NDAA passed by Congress.

**STATUS: OPEN.**

**Item No: A-5.05**

**Subject: ELIMINATE THE SURVIVOR BENEFIT PLAN (SBP)  
DEPENDENCY INDEMNITY COMPENSATION (DIC) OFFSET**

**RECOMMENDATION:**

**That the Secretary of the Navy support legislation to repeal the requirement to reduce Dependency Indemnity Compensation by the amount a survivor receives from the Survivor Benefit Plan.**

**DISCUSSION:**

Survivor Benefit Plan (SBP) and Dependency Indemnity Compensation (DIC) are paid for different reasons. SBP is purchased by the retiree and is intended to provide a portion of retired pay to the survivor. DIC is a special indemnity compensation paid to the survivor when a member's service causes his or her premature death. In such cases, the Department of Veterans Affairs (DVA), DIC should be added to SBP, not substituted for it. It's also a matter of equity that surviving spouses of federal civilian retirees (who were disabled veterans and died of military-service-connected causes) can receive DIC without losing any of their purchased federal civilian SBP benefits.

Due to the increasing number of casualties from Operation Iraqi Freedom and Operation Enduring Freedom, Congress extended SBP eligibility to the survivors of all service members who die on active duty regardless of time in service. Under current law, the surviving spouse of a retired member who dies of a service-connected cause is entitled to DIC from the DVA. If the military retiree was also enrolled in SBP, the surviving spouse's SBP benefits are reduced by the amount of DIC (currently \$993 per month). A pro-rated share of SBP premiums is refunded to the widow upon the member's death in a lump sum, but with no interest. The offset also affects all survivors of members who are killed on active duty.

In the case of members killed on active duty, a surviving spouse with children can avoid the dollar-for-dollar offset by electing Child-Only SBP. However, this means that SBP payments will cease when the youngest child attains his/her majority (age 18, or 22 if in school). Additionally, Social Security survivor benefits stop when the youngest child reaches age 18. This leaves the spouse with only the monthly DIC annuity from the DVA. The surviving spouses of those who give their lives for their country deserve fairer compensation.

H.R.808 proposes repeal of the provisions of Title 10 which require the offset of DIC payments from SBP annuities. The bill also provides for the recoupment of certain portions of SBP premiums that may have been refunded to the surviving spouse. The Retiree Council strongly supports the proposed legislation.

**RESPONSE: DEFER TO CONGRESS.** As of this writing, the Senate version of the FY06 National Defense Authorization Act (NDAA) contained a provision to remove the DIC/SBP offset, and in the House, Representative Chet Edwards recently introduced a discharge petition to

force a House vote on H.R. 808, which, if passed, would virtually assure that the final version of the NDAA would include this provision.

However, the Department of Defense has previously gone on record to Congress in opposition to H.R. 808. Among the reasons cited for opposing the bill are that it duplicates Government benefits, since the federal government fully funds both SBP and DIC for active duty deaths; does not take into account that SBP premiums paid by retirees which are attributed to the reduction for DIC are returned to the beneficiary, generally in a lump sum; disregards the finding of a 2004 study that the SBP/DIC offset is consistent with the benefits offered by other employers; and does not take into account that survivors of members who die on active duty and have children may avoid the offset by having the SBP paid to the children.

**STATUS: OPEN.**

**Item No: A-6.05**

**Subject: 30-YEAR PAID-UP SURVIVOR BENEFIT PLAN**

**RECOMMENDATION:**

**That the Secretary of the Navy support proposed legislation changing the effective date of paid-up Survivor Benefit Plan from October 1, 2008 to October 1, 2005.**

**DISCUSSION:**

The FY1999 National Defense Authorization Act authorized a 30-year paid-up Survivor Benefit Plan (SBP) provision allowing retired SBP enrollees who have attained age 70 and paid SBP premiums for at least 30 years (360 months) to stop paying premiums, while retaining SBP coverage for their survivors. However, because of budget constraints at the time, Congress delayed the effective date of this provision until October 1, 2008.

When paid-up SBP legislation was first proposed in 1997, it was to be effective five years later in 2002 -- 30 years from the date of SBP enactment in 1972. After multiple 'false starts', Senate and House conferees slipped the effective date to 2008 to allow "scoring" it as a no-cost proposal under the House 10-year budget window. This had the effect of fully covering members who retired after 1978, but disadvantaged earlier SBP enrollees, who will have to pay up to 36 years of premiums. This presumably unintended consequence has been dubbed a tax on the 'greatest generation' because it affects only retirees from that era.

Current proposed legislation (H.R. 968) would move up the existing 2008 implementation date, making the 30-year paid-up SBP coverage provision effective October 1, 2005.

**RESPONSE: DEFER TO CONGRESS.** As of this writing, a provision was inserted into the Senate version of the FY 2006 National Defense Authorization Act that would move the SBP paid up date to October 1, 2005. However, the Department of Defense has previously gone on record opposing the move-up date as too difficult for DFAS to accomplish administratively.

**STATUS: OPEN.**

**Item No. B-1.05**

**Subject: PRE-TAX HEALTH INSURANCE PREMIUMS**

**RECOMMENDATION:**

**That the Secretary of the Navy support legislation to amend the Internal Revenue Code to allow active duty, retired military members, and federal civilian annuitants to pay their health insurance premiums on a pre-tax basis.**

**DISCUSSION:**

Many uniformed services beneficiaries, including retirees, pay premiums for a variety of health insurance programs, such as TRICARE Prime enrollment fees, TRICARE Standard supplemental premiums, TRICARE Dental Plan, and TRICARE Retiree Dental Plan. For the vast majority, these premiums and enrollment fees are not tax-deductible because their health care expenses do not exceed 7.5 percent of their adjusted gross taxable income.

Since 2000, Federal civilian employees have been able to use pre-tax dollars to pay health insurance premiums to the Federal Employees Health Benefits Program under the "Premium Conversion" program. Premium conversion uses Federal tax rules to let employees deduct their share of health insurance premiums from their taxable income, thereby reducing their taxes. This plan is similar to the private sector, in which their employees have been allowed to deduct health insurance premiums from their taxable incomes for many years.

Similar legislation for all active and retired military beneficiaries would restore equity with many private sector and federal civilian workers who can pay their health premiums with pre-tax dollars. Compensation and benefits issues remain integral to retaining a top-quality all-volunteer force to wage the war against terrorism at home and abroad. The stresses of military life along with the recent increase in operations tempo are taking their toll on military families. While certain sacrifices are taken for granted as a part of the military life, it is important that every attempt be made to provide them with a Quality of Life that is competitive with the private sector.

Proposed legislation that currently addresses this issue includes H.R. 1231, H.R. 994, and S. 484. These bills would amend the IRS Code to allow active duty and retired military members and federal civilian annuitants to pay their health insurance premiums on a pre-tax basis. Military retirees and federal annuitants should be afforded the same tax relief for their health care premiums as private sector and civilian federal workers.

**RESPONSE: CONCUR.** The Department of the Navy has not been specifically asked to provide input on the bills listed above but can concur in concept with the idea of extending the payment of health insurance premiums on a pre-tax basis to active duty, military retirees and federal civilian annuitants.

**STATUS: CLOSED.**

**Item No: B-2.05**

**Subject: ISSUANCE OF DD214**

**RECOMMENDATION:**

**That the Secretary of the Navy support issuing DD 214s to separating and retiring service members early in order to facilitate completion of the DVA compensation decision at separation.**

**DISCUSSION:**

Current practice prohibits issuance of a DD 214 to a retiring or separating member prior to the day of active duty expiration. To adjudicate a Department of Veterans Affairs (DVA) compensation claim in conjunction with the service member's discharge, the DD 214 must be provided to the DVA office performing Benefits Delivery on Discharge (BDD) at the installation. The DVA reports that it takes approximately 45 days to complete the process for adjudication and notification of findings to the member. Retiree Council VA briefer, Mr. Tom Pamperin stated, "the U. S. Army issues DD 214's for member's submitting DVA compensation claims 45 days before date of separation" so that the DVA may adjudicate the claim, and provide notification of their findings to the separating soldier on the day of separation.

To adopt a "Best Practice," as identified by the DVA, Sailors and Marines' being separated or retired that are submitting DVA compensation claims should be issued a completed and signed DD 214 in a timely manner to satisfy BDD policy for rendering a compensation decision on the day of separation or retirement.

**RESPONSE: DO NOT CONCUR.** DD Form 214 is an important record of service that must be prepared accurately and completely because it is a source of significant and authoritative information used by civilian and governmental agencies to validate veteran eligibility for benefits. Issuing signed DD Form 214s so far in advance of the discharge date creates an overwhelming "margin for error." Some examples of situations that would necessitate a correction or a change to the information in the DD Form 214 if issued early: settlement of the leave account at the time of separation often changes initial calculations of the service member's leave balance; the separating service member is still under the authority of the UCMJ and could do something while on terminal leave that could affect their ultimate characterization of service; the service member may decide at the last moment to remain on active duty instead of separating; or the service member becomes seriously injured or ill while on terminal leave. These errors then have to be corrected—and redoing work does not constitute a "best practice."

The governing DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)" states that "the original of DD Form 214 showing separation from a period of active service with a Military Service, including release from a status that is legally determined to be void, will be physically delivered to the separatee prior to departure from the separation activity (a) on the effective date of separation; or (b) on the date authorized travel time commences. . . When the recipient departs in advance of normal departure time (e.g.,

on leave on conjunction with retirement; or at home awaiting separation for disability), the original DD Form 214 will be mailed to the recipient on the effective date of separation.”

Contact with the Army reveals that Army Regulation 635-5 (titled “Separation Documents”) states that Copies 1-8 of the DD Form 214 are not distributed until the soldier’s separation date, except for the “Copy 4” version (personal copy) of the DD Form 214, which can be provided to the soldier at the time they detach from the command for terminal/transition leave. Note however, that this is not the official copy of the DD 214 that is specifically for use by the Department of Veterans Affairs (Copy 3) for determining benefits. Copy 4 is considered to be a “courtesy copy” for the service member’s personal use. The Army advises that Copy 4 should not be considered an “official” copy of the DD Form 214 prior to separation.

Recognizing that there is a real need to provide separating Marines and Sailors with documentation that summarizes their accomplished service in advance of their separation date, the Marine Corps issues a “Statement of Service” to those Marines who request it for purposes of employment, benefits, etc. The document is versatile and allows inclusion of any or all data covered in the DD Form 214. The Statement of Service serves as an “interim working document” for requesting institutions. In the case of the Navy, upon request of the Sailor, he or she may receive an unsigned, zeroxed copy of the “Copy 4” version of the DD Form 214 prior to separation for personal use.

While the methods may vary from Service to Service, separating and retiring personnel are being provided with unofficial information that can be used by other agencies, at their discretion, for making determinations for benefits.

**STATUS: CLOSED.**

**Item No. B-3.05**

**Subject: SURVIVOR BENEFIT PLAN (SBP) MULTIPLE BENEFICIARIES**

**RECOMMENDATION:**

**That the Secretary of the Navy encourage the drafting of legislation to enable a service member to elect multiple Survivor Benefit Plan (SBP) beneficiaries as a result of divorce.**

**DISCUSSION:**

Generally, Survivor Benefit Plan (SBP) coverage is an irrevocable decision. However, under limited circumstances, the service member may withdraw from SBP or change his/her coverage. As an SBP participant, a service member has a one-year window to terminate SBP coverage between the second and third anniversary following the date he/she begins to receive retired pay. Should a service member make such a choice, premiums already paid will not be refunded and no annuity will be payable upon death. The covered spouse or covered former spouse must consent to the termination. Termination is permanent and participation will not be resumed under any circumstances and future enrollment is barred unless there is an authorized open enrollment period.

In the case of divorce, under current law, members can elect the SBP for only one spouse, either the current spouse or former spouse. Often, the election of a former spouse as the beneficiary of SBP is negotiated or court-ordered and made a part of the divorce decree. A former spouse who procures such a settlement or court-order freezes out any subsequent spouse and family the member may later acquire. This potentially creates the anomalous result that a former spouse might be entitled to, for example, only 10 percent of a member's retired pay, but upon the member's death, the former spouse will receive 100 percent of SBP and a current spouse would receive nothing.

In 2001, a DoD study (undertaken in accordance with the 1998 National Defense Authorization Act), concluded that this practice is unfair to the member and subsequent spouses. The study report recommended that SBP benefits be presumptively based on the share of retired pay a former spouse receives and recommended that SBP benefits be divisible among multiple spouses. To date, Congress has failed to act on DoD's recommendation.

We ask the Secretary to encourage DoD to resurrect the study and appeal, once again, to Congress to draft legislation to make SBP divisible among multiple spouses and create a presumption that the former spouse(s)'s share of SBP be consistent with the share of retired pay they receive.

**RESPONSE: CONCUR.** It is true that one of the recommendations in the 2001 Report to Congress by DoD concerning federal former spouse protection laws was to change the statute to allow SBP to be designated for multiple beneficiaries. However, Congress has not acted on DoD's recommendations.



Rather than resurrecting the study, an alternate way to raise the issue may be through the Department of Defense Unified Legislation and Budgeting (ULB) process. The ULB process provides an opportunity for multiple stakeholders to consider no-cost/low-cost proposals, which, if agreed upon by the stakeholders, then become part of the Omnibus legislative package submitted by DoD to Congress. A draft ULB proposal on this issue has been developed and will be vetted within the DoN in the upcoming months for possible insertion into the next ULB cycle, which will take place in mid-2006. Updates will be provided on the status of this item as events warrant.

**STATUS: OPEN.**